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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,827	06/01/2004	Stephen R. Postle	C-579	3826

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EXAMINER
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BAKER, CHARLOTTE M

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/709,827	<b>Applicant(s)</b> POSTLE ET AL.	
	<b>Examiner</b> Charlotte M. Baker	<b>Art Unit</b> 2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments filed 09/27/2006 have been fully considered but they are not persuasive. Regarding Applicant's remarks that the Chan reference is deficient in teaching a method for controlling metamerism by providing a plurality of formulas that are suitable for producing a color for at least two different types of colored materials, Examiner respectfully traverses. First, Applicant cites Applicant's specification (p. 5, ln. 7-10) referring to a paper label and a plastic bottle cap. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., paper label on a plastic bottle and plastic bottle cap for a bottle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Attention is drawn to Chan (col. 7, ln. 50 through col. 8, ln. 3 and col. 8, ln. 57-62). It is clear that Chan is concerned with substrate type and color and how the formulation changes based upon these differences. Chan specifically addresses metal and plastic substrates. Chan also discloses that there are many kinds of materials made by the process of the invention such as containers and labels, etc. (col. 8, ln. 57-62). Additionally, Applicant argues that Chan does not teach or suggest how to solve the problem of metamerism to obtain the exact same color in two different types of colored material. Again, Applicant is not claiming "exact same color". Chan satisfies the element of controlling metamerism (when two samples match in color under one condition, but fail to match under another). Chan addresses the concern of color shift and

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how the calculation of the formulation takes this into account (col. 7, ln. 50 through col. 8, ln. 3). Therefore, in light of the items addressed above, Examiner concludes that the modification of Chan was proper and Chan does disclose the critical element of the claimed invention.

### *Claim Objections*

2. Claims 22-29 and 31-40 are objected to because of the following informalities: claims 1-20 were canceled, but claims 22-29 and 31-40 still depend back to canceled claims. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chan (6,342,952).

**Regarding claim 21:** The structural elements of apparatus claim 30 perform all of the steps of method claim 21. Thus, claim 21 is rejected for the same reasons discussed in the rejection of claim 30.

**Regarding claim 22:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claims 31 and 32 perform all of the steps of method claim 22. Thus, claim 22 is rejected for the same reasons discussed in the rejection of claims 31 and 32.

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**Regarding claim 23:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 33 perform all of the steps of method claim 23. Thus, claim 23 is rejected for the same reasons discussed in the rejection of claim 33.

**Regarding claim 24:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 34 perform all of the steps of method claim 24. Thus, claim 24 is rejected for the same reasons discussed in the rejection of claim 34.

**Regarding claim 25:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 35 perform all of the steps of method claim 25. Thus, claim 25 is rejected for the same reasons discussed in the rejection of claim 35.

**Regarding claim 26:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 36 perform all of the steps of method claim 26. Thus, claim 26 is rejected for the same reasons discussed in the rejection of claim 36.

**Regarding claim 27:** Chan satisfies all the elements of claim 26. The structural elements of apparatus claim 37 perform all of the steps of method claim 27. Thus, claim 27 is rejected for the same reasons discussed in the rejection of claim 37.

**Regarding claim 28:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 38 perform all of the steps of method claim 28. Thus, claim 28 is rejected for the same reasons discussed in the rejection of claim 38.

**Regarding claim 29:** Chan satisfies all the elements of claim 21. The structural elements of apparatus claim 39 perform all of the steps of method claim 29. Thus, claim 29 is rejected for the same reasons discussed in the rejection of claim 39.

**Regarding claim 30:** Chan discloses a memory (Fig. 1, server/second computer 10) that electronically stores a color choice (col. 3, ln. 10-18), the color choice is selectable to

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represent the color (input ink color, col. 3, ln. 10-18); a color selection module (Fig. 1, software package C 22, col. 3, ln. 57-60) that includes a color selection interface (graphical user interface, col. 3, ln. 3-18); a criteria selection module (Fig. 1, server 10) that includes a criteria selection interface (interface for entering information, Fig. 2, col. 4, ln. 12-29) to enable an electronic selection of a first criteria selection and a second criteria selection from a plurality of criteria choices (Fig. 2) (col. 4, ln. 12-39), the first and second criteria selections (Fig. 2) (col. 4, ln. 12-39) and criteria choices stored in memory (Fig. 1, server 10) (col. 4, ln. 12-39); a matching module (Fig. 1, software package C 22, col. 3, ln. 55-66) that electronically matches the color selection and the first criteria selection (col. 4, ln. 12-39), and electronically matches the color selection and the second criteria selection (col. 4, ln. 12-39).

Chan fails to specifically address a plurality of color choices, but discloses these features in a later embodiment.

Chan discloses to enable an electronic color selection from a plurality of color choices (library of colors, col. 4, ln. 59 through col. 5, ln. 9), wherein the color choices and color selection are stored in the memory (Fig. 1, server/second computer 10).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to include a library of colors to select from in order to give the customer more varieties of color to choose from.

Chan fails to specifically address first and second formulas in the first embodiment and second embodiments, but discloses it in a later embodiment.

Chan discloses a formula module (Fig. 1, software package C 22, col. 3, ln. 55 through col. 4, ln. 3) that provides a first formula (ink formulation) suitable to produce

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the color for a first of the at least two colored materials (col. 7, ln. 50 through col. 8, ln. 3 and col. 8, ln. 57-62), and provides a second formula (ink formulation) suitable to produce the color for a second of the at least two colored materials (col. 7, ln. 50 through col. 8, ln. 3 and col. 8, ln. 57-62); and an optimization module (Fig. 1, software package C 22, the optimization module electronically optimizes the first formula (ink formulation) and the second formula (ink formulation) to control metamerism (Examiner is interpreting metamerism as when two samples match in color under one condition, but fail to match under another. In this case, metamerism is being prevented by calculating the appearance of colors under different lighting conditions.) between the first colored material and the second colored material (col. 7, ln. 50 through col. 8, ln. 3 and col. 8, ln. 57-62).

It would have been obvious to a person of ordinary skill in the art at the time of the invention to include first and second formulas in order to allow the customer to use the same color for different printing process, which requires different ink formulations as taught by Chan (col. 7, ln. 50 through col. 8, ln. 3 and col. 8, ln. 57-62).

**Regarding claim 31:** Chan satisfies all the elements of claim 30. Chan further discloses at least a third electronic criteria selection (col. 4, ln. 12-39) (example of criterion, Fig. 2).

**Regarding claim 32:** Chan satisfies all the elements of claim 31. Chan further discloses a combining module (Fig. 1, server 10) that combines at least one of the first criteria selection and the second criteria selection with the third criteria selection (col. 4, ln. 12-39).

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**Regarding claim 33:** Chan satisfies all the elements of claim 30. Chan further discloses a display (Fig. 1, color monitor 6) that presents the color choices and the criteria choices (graphical user interface and Fig. 2, col. 4, ln. 12-39).

**Regarding claim 34:** Chan satisfies all the elements of claim 30. Chan further discloses wherein the criteria includes at least one of a substrate, financial cost, availability and pigment selection (col. 4, ln. 12-39).

**Regarding claim 35:** Chan satisfies all the elements of claim 30. Chan further discloses wherein the criteria includes the ability for a color to resist at least one of sunlight, water, solvent, acid, alkali, temperature, humidity, abrasion, cracking, bending, light and ultraviolet radiation (col. 4, ln. 12-39 and Fig. 2, "resistance needed").

**Regarding claim 36:** Chan satisfies all the elements of claim 30. Chan further discloses a communication network (Fig. 1 and col. 2, ln. 58 through col. 3, ln. 18).

**Regarding claim 37:** Chan satisfies all the elements of claim 36. Chan further discloses wherein the communication network is the Internet (col. 2, ln. 65 through col. 3, ln. 3).

**Regarding claim 38:** Chan satisfies all the elements of claim 30. Chan further discloses wherein the of optimizing module modifies the color represented by the color choice (Fig. 1, software package C 22 and col. 3, ln. 55 through col. 4, ln. 3).

**Regarding claim 39:** Chan satisfies all the elements of claim 30. Chan further discloses an electronic library (Fig. 1, server 10) wherein the color choices and the criteria choices are stored (col. 3, ln. 10-18) (col. 4, ln. 12-39).

**Regarding claim 40:** Chan satisfies all the elements of claim 39. Chan further discloses a user interface (graphical user interface, col. 3, ln. 3-18) that provides means to add, update and delete information stored in the electronic library (col. 4, ln. 12-39).



*Conclusion*

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newman (7,053,910); McClanahan (US 204/0073526).
4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlotte M. Baker whose telephone number is 571-272-7459. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kimberly A. Williams can be reached on 571-272-7471. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
CMB  
**KIMBERLY WILLIAMS**  
**SUPERVISORY PATENT EXAMINER**